

Letter of Findings Number: 03-20140587P
Tax Administration
For Tax Periods ending April 30, 2013 and May 31, 2013

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The penalties for late payment were not waived. The late payment and non-filing of returns were proper reasons for imposing penalties.

ISSUE

I. Tax Administration–Penalties.

Authority: IC § 6-3-4-8; IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalties.

STATEMENT OF FACTS

Taxpayer is an Indiana business. Taxpayer made a late withholding tax payment for April 2013 and did not file returns for April 2013 and May 2013. The Indiana Department of Revenue ("Department") assessed penalties for those months. Taxpayer disagreed with the penalty assessments. Taxpayer submitted a protest to that effect. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Tax Administration–Penalties.

DISCUSSION

Taxpayer is an Indiana business that made a late monthly withholding payment and failed to file returns for that month and the following month. The Department imposed penalties for the late payment and failure to file returns. Taxpayer protests that the penalties imposed by the Department are excessive. Taxpayer asks for an abatement of the penalties assessed against it for the tax periods ending April 30, 2013 and May 31, 2013.

Taxpayer states that it underwent significant personnel changes in early 2013 and that the individuals responsible for remitting withholding taxes and filing returns left Taxpayer's employment. In June 2013, Taxpayer hired a third party to handle its payroll processing. The third party found that the April and May 2013 withholding payments had not been made. The third party then paid the withholding amounts for April 2013 on June 14, 2013 and for May 2013 on June 28, 2013. The third party did not, however, file the appropriate withholding forms along with the payments.

Eventually, the payments sent in by the third party were applied to the two months at issue, albeit several months after the due dates. The Department therefore issued proposed assessments for penalty and interest on those payments. Taxpayer believes that the late payments and filing of forms were isolated events in an otherwise consistent on-time payment history and that waiver of the penalties is therefore warranted. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The Department refers to IC § 6-8.1-10-2.1(d), which states:

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency

determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.
(Emphasis added).

Next, the Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.
(Emphasis added).

Finally, [45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.
(Emphasis added).

Taxpayer protests the Department's assessment of penalties. After review of the documentation and analysis provided in the protest process and a review of the Department's records, the Department may not waive penalty as provided by [45 IAC 15-11-2\(c\)](#). A taxpayer's personnel status does not relieve it of its duty to remit taxes held in trust, such as withholding tax. As in effect during the two months at issue, IC § 6-3-4-8(b) provided that an employer shall pay taxes withheld under IC § 6-3-4-8(a) during a particular month to the department no later than thirty (30) days after the end of that month. Also as in effect during the two months at issue, IC § 6-3-4-8(e) required employers to file a return with any withholding tax payment it made. Taxpayer was beyond the thirty-day payment deadline for the April 2013 payment and did not file returns with either the April 2013 or the May 2013 payments.

In addition to the filing and payment requirements listed above, a review of the Department's records shows that the late withholding tax payment and non-filing of returns were not isolated events for Taxpayer. The records show several late payments of withholding tax over the preceding four years. Taken together, the filing and payment requirements of IC § 6-3-4-8 and the multiple occurrences of late payments do not support Taxpayer's position. IC § 6-8.1-10-2.1 requires a taxpayer to show that its failure to remit taxes in a timely manner is due to reasonable cause. Taxpayer failed to demonstrate reasonable cause and as a result Taxpayer's protest is denied. Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong.

FINDING

Taxpayer's protest is denied.

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